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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20–24 August 2018

Opinion No. 62/2018 concerning Wang Quanzhang, Jiang Tianyong and Li Yuhan (China)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 12 December 2017 the Working Group transmitted to the Government of China a communication concerning Wang Quanzhang, Jiang Tianyong and Li Yuhan. The Government replied to the communication on 10 January 2018. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Wang Quanzhang, born on 15 February 1976, is a citizen of China. He is a human rights lawyer and works with Fengrui Law Firm in Beijing.

5. Jiang Tianyong, born on 19 May 1971, is a citizen of China. He resides in Zhongyuan district, Zhengzhou, Henan province. Mr. Juang is a human rights lawyer.

6. Li Yuhan, born on 9 October 1957, is a citizen of China. She resides in Yuhong district, Shenyang. Ms. Li is a human rights lawyer.

Arrest and detention of Wang Quanzhang

7. The source reports that on 3 August 2015, Mr. Wang was taken into custody by police from Tianjin Public Security Bureau. The source notes that prior to that date, on 9 July 2015, Mr. Wang had gone into hiding because the authorities had allegedly started a nationwide crackdown on human rights lawyers. In its article of 11 July 2015, Xinhua State media accused the law firm with which Mr. Wang works of running a "criminal syndicate" serving as a platform for masterminding serious illegal activities to incite "social disorder" and to gain "profits".

8. According to the source, on 4 August 2015, Mr. Wang was placed under criminal detention on suspicion of "picking quarrels and provoking trouble" and "inciting subversion of State power" (articles 293 and 105 (2) of the Criminal Law). He was initially held at Hexi District Detention Centre in Tianjin Municipality, but was then placed under "residential surveillance at a designated location" by Hexi District Public Security Bureau.

9. On 8 January 2016, after several months of incommunicado detention, Mr. Wang was arrested for "subversion of State power" and transferred to Tianjin No. 2 Detention Centre. The source specifies that the legal basis for the arrest is article 105 (1) of the Criminal Law, which stipulates that, with regard to organizing, plotting or acting to subvert the political power of the State and overthrow the socialist system, ringleaders or those who commit serious crimes are to be sentenced to life imprisonment or no less than 10 years of fixed-term imprisonment; active participants are to be sentenced to no less than 3 years and no more than 10 years of fixed-term imprisonment; and other participants are to be sentenced to no more than 3 years of fixed-term imprisonment, criminal detention, control or deprivation of political rights.

10. The source reports that the authorities obstructed the work of the lawyers hired by Mr. Wang's family, thus violating his right to legal counsel of his own choosing. In November 2015, Mr. Wang's family had to hire new lawyers to represent him, after the authorities allegedly pressured the initial lawyers to drop his case. The source adds that in the same week in January 2016 that Mr. Wang was officially arrested, one of his new lawyers was detained and placed under "residential surveillance at a designated location". Moreover, Mr. Wang's incommunicado detention in August 2015 has led to serious concerns that he may have been subjected to torture or other forms of coercive ill-treatment.

11. On 8 August 2016, the authorities at Tianjin No. 2 People's Prosecutor's Office informed Mr. Wang's family that indictment had already been recommended in his case. The following day, the officials of that institution told Mr. Wang's lawyer that in February 2016, Mr. Wang had given the police a letter in which he had stated that he did not want to engage legal counsel and wanted to terminate the employment of the lawyer chosen for him by his family. The authorities have refused to allow Mr. Wang's lawyer to take a copy of that document, which, the source claims, is his right under national law. The source submits that, given that there is no independent verification of Mr. Wang's treatment in detention and the six-month delay in producing the above-mentioned letter, it is suspected that Mr. Wang was coerced to sign it. On 5 December 2016, the prosecution sent Mr. Wang's case back to the police for further investigation. On 14 February 2017, Mr. Wang was indicted.

12. From August 2015 when he was taken into custody to date, Mr. Wang has been held in incommunicado detention despite numerous attempts by his lawyers, family and supporters to gain access to him and to call for his release. The requests that Mr. Wang's

lawyers have made to meet with their client have been denied by the authorities on the grounds of national security. Mr. Wang's lawyers have filed a complaint with the local prosecution authorities asking for information regarding his whereabouts, but have received no response. They have also unsuccessfully sought assistance from the All China Lawyer's Association, which, the source specifies, is a governmental body.

13. Mr. Wang was previously the subject of a joint urgent appeal sent on 22 March 2017 by the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Working Group on Arbitrary Detention acknowledges the reply from the Government of China to that joint communication, which was received on 18 April 2017.

Arrest, detention and conviction of Jiang Tianyong

14. The source reports that on 21 November 2016, Mr. Jiang went missing as he was going to the station to board a train to Beijing from Changsha city in Hunan province. During his stay in Changsha city, Mr. Jiang had met a family member and the legal counsel of one of the human rights lawyers who at that time was detained at Changsha City Detention Centre. Mr. Jiang's family members and lawyers immediately reported his disappearance to the authorities. However, the police have allegedly refused to open a missing person case.

15. On 16 December 2016, the authorities confirmed through the media that Mr. Jiang had been taken into custody by public security officers and sentenced to nine days' administrative detention for the fraudulent use of another person's identity.

16. The source notes that this offence is stipulated in article 52 of the Law on Penalties for Administration of Public Security, which provides that a person who commits one of the acts listed below will be detained for between 10 days and 15 days and may, in addition, be fined no more than 1,000 yuan, and that if the circumstances are relatively minor, he or she will be detained for between 5 and 10 days and may, in addition, be fined no more than 500 yuan: (a) forging, altering, buying or selling official documents, certificates, testimonial papers or seals of a government department, people's organization, enterprise, institution or other organization; (b) buying, selling or using forged or altered official documents, certificates or testimonial papers of a government department, people's organization, enterprise, institution or other organization; (c) forging, altering or reselling train or bus tickets, ship tickets, air tickets, admission tickets for theatrical performances or sports competitions, or other negotiable bills or vouchers; or (d) forging or altering a certificate of vessel registration, buying, selling or using a forged or altered certificate of vessel registration, or altering the number of a vessel engine.

17. Reportedly, the authorities also specified in a media report that on 1 December 2016, Mr. Jiang had been placed under "compulsory criminal measures" for "illegally possessing documents classified as State secrets" under article 282 of the Criminal Law, and for "illegally disseminating State secrets overseas" under article 111 of the Criminal Law.

18. According to the source, on 23 December 2016, Mr. Jiang's family members received notification from the Changsha City Public Security Bureau informing them that he had been placed under residential surveillance at a designated location on suspicion of "inciting subversion of State power". The source notes that this is a form of de facto enforced disappearance. On 29 December 2016, the authorities at the Changsha Public Security Bureau rejected Mr. Jiang's defence lawyer's request to meet with Mr. Jiang.

19. The source submits that Mr. Jiang was held in incommunicado detention and was consistently denied access to his legal counsel up until his formal arrest in May 2017. Allegedly, the lawyers Mr. Jiang's family had hired were denied access to their client on the grounds that such contact would "endanger national security", "hinder investigation" or "leak State secrets". The authorities have prevented Mr. Jiang's lawyers from visiting him even after the State-run media had been allowed to meet Mr. Jiang. In its reports in early March 2017, the State-run media claimed that Mr. Jiang had "fabricated" stories about the alleged torture suffered by the human rights lawyer detained at the Changsha City

Detention Centre, whose legal counsel Mr. Jiang had met during his visit to Changsha city in November 2016. These media outlets have also broadcast the interview with Mr. Jiang.

20. The source reports that Mr. Jiang remained incommunicado until 31 May 2017, when he was formally arrested. At the time of the arrest, Mr. Jiang was charged with the crime of "subversion of State power". Furthermore, the authorities claimed that Mr. Jiang had "fired" the lawyers hired by his family. The source notes that by doing so, the Government has employed a common tactic of forcefully removing legal counsel from detained human rights defenders.

21. In June 2017, the Changsha police recommended the indictment of Mr. Jiang on the lesser charge of "inciting subversion". In July 2017, Mr. Jiang was indicted by the Changsha prosecutors' office. On 17 July 2017, the police rejected a request filed by the family-appointed lawyer to meet with Mr. Jiang, claiming that he had already hired his own lawyers.

22. The source highlights the fact that several procedural irregularities and violations of basic fair trial rights occurred during Mr. Jiang's trial, which took place on 22 August 2017. Despite being partially broadcast online, the proceedings were held behind closed doors and Mr. Jiang's supporters and international observers were denied access to the courthouse. Furthermore, the court publicly announced the trial on its social media account only half an hour before the hearing began. Mr. Jiang was represented by a Government-appointed lawyer, since the authorities did not allow the lawyers hired by his family to meet him, claiming that he had dismissed them.

23. During the hearing, the prosecution claimed that Mr. Jiang had used online posts and conducted interviews with the foreign media to attack the Government, the judiciary and the political system. He was also accused of inciting others to gather in public places. Mr. Jiang had allegedly confessed that he had attended training courses abroad, which had encouraged him to reject the Chinese political system. The source notes that it is believed that this confession was coerced or extracted under torture.

24. The source reports that on 21 November 2017, the Changsha Intermediate People's Court found Mr. Jiang guilty of "inciting subversion of State power" and sentenced him to two years' imprisonment and three years of deprivation of political rights. During this court hearing, as at the hearing in August 2017, Mr. Jiang's supporters were barred from attending his sentencing. In convicting Mr. Jiang, the court referred to the "evidence" presented during the trial, specifically mentioning his advocacy for several human rights activists, claiming that it had "severely harmed" national security and social stability. In addition, the court cited his attendance at training courses overseas, his applications for funding from organizations claimed to be "anti-China forces" and his joint work with other lawyers towards the establishment of the "China safeguard human rights lawyers service group".

25. The source adds that Mr. Jiang's family attempted to sue the *Legal Daily* and the *Procuratorate Daily*, the two State-run newspapers, for defamation in reproducing the State media report on Mr. Jiang's detention. However, the Chaoyang District People's Court in Beijing refused to admit the case, stating that it would "interfere with the law" because Mr. Jiang's case was still at the investigation phase at that time. The Shanghai Municipal No. 2 Intermediate People's Court also refused to hear the case. The source submits that the articles printed by the above-mentioned newspapers falsely asserted that Mr. Jiang's family had been notified of his detention. The media reports also contained unsubstantiated police accusations that Mr. Jiang had accepted overseas funding, used the Internet to spread rumours, and incited his family members to confront government institutions.

26. Mr. Jiang has previously been the subject of a number of joint urgent appeals sent on 10 June 2009, 7 December 2010, 2 March 2011, 16 July 2016 and 18 April 2017 by the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment. The Working Group on Arbitrary Detention acknowledges the replies from the Government of China received on 27 August 2009, 20 August 2014 and 18 April 2017.

Arrest and detention of Li Yuhan

27. The source reports that on 9 October 2017, Ms. Li was taken into custody by the Heping Subdivision of the Shenyang City Public Security Bureau. The authorities did not produce any detention notice. Ms. Li subsequently went missing for three weeks, during which time it is alleged that she was tortured.

28. On 31 October 2017, the authorities informed Ms. Li's family verbally that she was being detained for "picking quarrels and provoking trouble" at the Shenyang City No. 1 Detention Centre. She was detained under article 293 of the Criminal Law, which stipulates that anyone who undermines public order with any of the following types of provocative and disturbing behaviour is to be sentenced to no more than five years of fixed-term imprisonment, criminal detention or control: (a) wilfully attacking another person under aggravating circumstances; (b) chasing, intercepting or cursing another person under aggravating circumstances; (c) forcibly taking away, demanding or wilfully damaging or seizing public or private property under aggravating circumstances; or (d) creating a disturbance in a public place, causing serious disorder.

29. The source notes that articles 37 and 83 of the Criminal Procedure Law guarantee, except in the case of State security-related crimes (not applicable in Ms. Li's case), the rights of a suspect or defendant to meet and communicate in writing with his or her legal counsel, and the right of the family to be formally notified of the detention within 24 hours.

30. The source submits that Ms. Li's detention appears to be partly in retaliation for her presentation of repeated appeals to the authorities to locate and support lawyers who disappeared in police custody, including Mr. Wang, whom Ms. Li represented in 2015 and 2016. The authorities had allegedly made it clear that they regarded Ms. Li's legal defence of Mr. Wang as "sensitive", warning her family members to "keep their distance" from Ms. Li or else "face severe consequences".

31. On 9 November 2017, Ms. Li's lawyer and a family member visited her in detention. They subsequently reported that she had been tortured in custody. Officers had allegedly handcuffed and hooded Ms. Li, and they had also threatened to kill her if she did not reveal her mobile telephone password.

32. One week later, during another visit by Ms. Li's lawyer, it was noted that she was having difficulty walking. It is alleged that the authorities poured cold water on Ms. Li and she suffered from a severe cold. When Ms. Li complained about pain and discomfort, the authorities allegedly ridiculed her and threatened to have her handcuffs tightened. The police eventually took Ms. Li to hospital for examination. However, it is submitted that even at the hospital she was exposed to the cold and not given food or water. Upon Ms. Li's return to the detention centre, a guard allegedly pushed her back into her cell using excessive force.

33. The source submits that there are grave concerns that Ms. Li, who has several serious health problems, is not receiving proper medical treatment and that the ill-treatment she is facing in custody is aggravating her poor health. When she was taken into custody in October 2017, Ms. Li was reportedly suffering from atrial fibrillation arrhythmia, coronary heart disease, hyperthyroidism, diffuse gastritis and other conditions.

34. The source notes that the ill-treatment that Mr. Li has received is similar to the abuse to which she was subjected by the police in the past in an attempt to interfere with her independence as a lawyer. In the most recent incident prior to her current detention, in May 2015, the Beijing police allegedly kidnapped and assaulted Ms. Li after she had reported local officials' illegal behaviour to the authorities. While Ms. Li was in custody at that time, an officer pushed her head against a toilet and she lost consciousness. After her release, Ms. Li was diagnosed with concussion and injuries to her back, head, limbs and abdomen. She subsequently suffered from headaches, dizziness, nausea, blurred vision and an irregular heartbeat.

35. Based on the circumstances surrounding the detentions of Mr. Wang, Mr. Jiang and Ms. Li, the source concludes that they have been detained solely due to the peaceful exercise of their rights guaranteed under the Universal Declaration of Human Rights and that their detention falls within category II (when the deprivation of liberty results from the exercise of the rights and freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights).

Response from the Government

36. On 12 December 2017, the Working Group transmitted the allegations from the source to the Government, under its regular communication procedure. The Working Group requested the Government to provide, by 12 February 2018, detailed information about the current situation of Mr. Wang, Mr. Jiang and Ms. Li. The Working Group also requested the Government to clarify the legal provisions justifying their continued detention, and the compatibility of their detention with the obligations of China under international human rights law. In addition, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. Wang, Mr. Jiang and Ms. Li. The Government responded to the regular communication on 10 January 2018.

37. In its response, regarding the case of Mr. Wang, the Government submits that, as he was accused of the crime of inciting subversion of State power, Mr. Wang was placed under criminal detention, according to the law, in August 2015, by the public security authorities of Tianjin Municipality. Procuratorial authorities approved Mr. Wang's arrest in January 2016 and indicted him in February 2017. Mr. Wang is currently detained in Tianjin Municipal No. 2 Detention Centre. China is a country ruled by law and it safeguards all the rights of criminal suspects, according to the law. The Government submits that the relevant authorities that handled Mr. Wang's case safeguarded all of his legal rights according to the law.

38. Regarding the case of Mr. Jiang, the Government stated that the Changsha City Intermediate People's Court had heard Mr. Jiang's case in open court proceedings on 22 August 2017. The court had publicly announced a verdict according to the law on 21 November 2017, finding Mr. Jiang guilty of the crime of inciting subversion of State power and sentencing him to two years' imprisonment and three years' deprivation of political rights. Mr. Jiang had indicated in court that he would not appeal. During the process of adjudicating Mr. Jiang's case, the Changsha City Intermediate People's Court had fully safeguarded Mr. Jiang's and his defence counsel's right to a public trial. Among those who had observed the trial and the sentencing were Mr. Jiang's family members and representatives of the local people's congress, as well as the local politics and law committee, legal scholars, lawyers, individuals from all sectors of society and journalists. The full trial and sentencing proceedings were broadcast via the official Changsha City Intermediate People's Court Sina Weibo account. The Government submits that the relevant authorities that handled Mr. Jiang's case safeguarded all of his legal rights according to the law.

39. Regarding the case of Ms. Li, the Government indicated that, as she was accused of the crime of picking quarrels and provoking trouble, Ms. Li was placed under criminal detention according to the law on 9 October 2017 by the public security authorities of Liaoning Province. Procuratorial authorities approved Ms. Li's arrest on 15 November 2017. The Government submits that the relevant authorities that handled Ms. Li's case safeguarded all of her legal rights according to the law.

Additional information from the source

40. On 26 February 2018, the source submitted comments to the responses by the Government of China concerning the cases of Mr. Wang, Mr. Jiang and Ms. Li.

41. Regarding the case of Mr. Wang, the source indicates that, contrary to the Government's response, Mr. Wang's procedural and legal rights have not been safeguarded, including in terms of: family notification of his detention status, period of pretrial detention, incommunicado detention, deprivation of legal counsel of his or his family's choosing, and reprisals against a lawyer hired by his family.

42. According to the source, his family never received a police notice confirming his detention status under residential surveillance at a designated location, in violation of Chinese law. Mr. Wang was detained from August 2015 to January 2016 under residential surveillance at a designated location, a form of de facto enforced disappearance codified under article 73 of the Criminal Procedure Law. The Chinese authorities have continued to use residential surveillance at a designated location, despite calls for this form of detention to be abolished, including from the Committee against Torture, which, in its concluding observations adopted in 2015, recommended that the Government repeal article 73 as a "matter of urgency" (CAT/C/CHN/CO/5, para. 15).

43. Although Mr. Wang was indicted in February 2017, the source submits that he has yet to appear before a judge, and his two and a half years in custody constitute unreasonably prolonged pretrial detention, according to international human rights norms.

44. Mr. Wang's family, lawyers and other supporters have had no contact with him since he was taken into custody and have not received any information from the authorities on his condition in detention. His complete lack of contact with the outside world strongly suggests deprivation of his communication rights, and his extended secret detention has put him at risk of torture and other forms of ill-treatment.

45. While the police have deprived Mr. Wang of his right to access a lawyer of his or his family's choosing, the authorities have recently committed several acts of reprisal against one such lawyer. After previously having been prevented from representing Mr. Wang, judicial officials in Beijing cancelled the law licence of the lawyer in question on 15 January 2018, a retaliatory measure that the Chinese authorities have increasingly used as an administrative punishment against human rights lawyers. On 19 January, police in Beijing took Mr. Wang's lawyer into custody while he was taking his child to school and placed him under criminal detention, accusing him of "obstructing official duties". On 27 January, Mr. Wang's lawyer was placed under residential surveillance at a designated location by the Xuzhou City Public Security Bureau in Jiangsu Province, on suspicion of "inciting subversion of State power". He has been held incommunicado since being detained and is at risk of torture and other forms of ill-treatment.

46. Regarding the case of Mr. Jiang, contrary to the Government's response, Mr. Jiang's procedural and legal rights have not been safeguarded, including in terms of: deprivation of legal counsel of his or his family's choosing, and giving Mr. Jiang a just and fair trial open to the public.

47. Immediately after Mr. Jiang's detention in November 2016, his family members employed defence lawyers for him, but the authorities refused to allow these lawyers to meet with Mr. Jiang on the grounds it would "endanger national security". Instead, Mr. Jiang was forced to accept two defence lawyers appointed by the authorities, which constitutes deprivation of his right to legal counsel of his or his family's choosing. The Government-appointed lawyers have not communicated directly with Mr. Jiang's family; instead, State authorities have provided the family with information on Mr. Jiang's case, including the schedules for his trial (in August 2017) and sentencing (in November 2017). Government officials, and not the appointed lawyers, also informed the family of the verdict after Mr. Jiang was sentenced to a two-year prison term. The authorities have otherwise not provided Mr. Jiang's family with any information, including on his physical condition or circumstances in detention.

48. Contrary to the Government's claim that Mr. Jiang was "tried in open court proceedings", security forces blocked off the area around the courthouse and prevented many individuals from observing the trial in August 2017, including lawyers hired by Mr. Jiang's family, supporters and foreign diplomats.

49. Similarly, the police used force to prevent supporters and other individuals from attending Mr. Jiang's sentencing in November 2017. In addition, the video broadcast of both Mr. Jiang's trial and sentencing, far from indicating that his rights were protected in open proceedings, has been widely perceived as a government attempt to humiliate Mr. Jiang at a "show trial" and publicize his "confession" to concocted criminal charges, most likely following torture or coercion.

50. Regarding the case of Ms. Li, contrary to the Government's response, Ms. Li's procedural and legal rights have not been safeguarded, including in terms of: family notification of her detention status, and providing protection from torture and other forms of ill-treatment.

51. After Ms. Li was taken into custody on 9 October 2017, Shenyang police did not provide her family with a detention notice or any other official information, and her family learned of her criminal detention only on 31 October. This violates Chinese law, which guarantees the right of a family to be notified within 24 hours in case of detention, except in cases of alleged State security-related crimes, which is not applicable in Ms. Li's case.

52. In violation of her rights, Ms. Li has been subjected to various forms of ill-treatment in detention, including being deprived of sufficient food and appropriate medical treatment for serious illnesses. The police in the detention centre have reportedly allowed other detainees to defecate in her food, cursed at Ms. Li and told her to die, taunting her for her poor health, and exposed her to extremely cold temperatures.

Discussion

53. The Working Group thanks both the source and the Government for their submissions. The Working Group, in its jurisprudence, has established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68).

54. In the present case, the source claims that the detention by the Chinese authorities of Mr. Wang, Mr. Jiang and Ms. Li, all three Chinese nationals, took place in the context of a nationwide crackdown on human rights lawyers in China. The Government has not rebutted those allegations.

Category I

55. According to the information submitted by the source, which was not rebutted by the Government, Mr. Wang and Ms. Li were both held in incommunicado, or in a de facto situation of disappearance, during the initial stages of their detention. Furthermore, Mr. Jiang was denied contact with his lawyer during the initial six months of his detention. The Working Group is concerned that the three human rights lawyers did not have an effective opportunity to mount an appropriate legal challenge to the basis of the detention before a court of law, specifically at the initial stage of their detention.

56. The Working Group, in its jurisprudence, has consistently argued that holding a person incommunicado breaches the right to challenge the lawfulness of detention before a judge,[1] in view of articles 8, 10 and 11 of the Universal Declaration of Human Rights. In addition, the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation (para. 2). The Working Group is of the view that the rights of Mr. Wang, Mr. Jiang and Ms. Li to challenge the legal basis of their detention was not guaranteed, given that they were placed out of the protection of the law by means of incommunicado detention and by denying them effective access to legal assistance.

57. *Moreover, the Working Group* considers that the charges against Mr. Wang, Mr. Jiang and Ms. Li were so vague and broad that they could be used to deprive individuals of their liberty without a specific legal basis. As the Working Group has previously stated, the

[1] See opinions No. 93/2017, para. 49, and No. 26/2018, para. 57.

principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.[2]

58. The Working Group has emphasized in its reports that vague and imprecisely worded laws jeopardize the fundamental rights of those who wish to exercise their right to hold an opinion or exercise their freedoms of expression, of the press, of assembly and of religion, as well as to defend human rights, and that such laws are likely to result in arbitrary deprivation of liberty. The Working Group has recommended in the past that crimes be defined in precise terms, and that legislative measures be taken to introduce an exemption from criminal responsibility for those who peacefully exercise their rights guaranteed in the Universal Declaration of Human Rights.[3] The Working Group considers that, in the circumstances of the present case, the laws used to charge the detainees were so vague and overly broad that it was impossible to invoke a legal basis justifying the deprivation of liberty.[4]

59. Having concluded that the incommunicado detention and lack of effective legal assistance during the initial stages of detention prevented Mr. Wang, Mr. Jiang and Ms. Li from challenging the legality of their deprivation of liberty, and that the vagueness of the law was so great that it was not possible to invoke it as a basis for the detention, the Working Group considers that the detention of Mr. Wang, Mr. Jiang and Ms. Li lacks a legal basis and is arbitrary under category I.

Category II

60. The Working Group is convinced that Mr. Wang, Mr. Jiang and Ms. Li are human rights lawyers, as reported by the source. This was not challenged by the Government. The three of them have taken up and defended various cases in which the violation of human rights, such as freedom of belief and access to information, has been a central issue. The three lawyers have represented or taken part in the defence of Falun Gong practitioners, Tibetans, investigative journalists, other human rights lawyers, pro-democracy advocates, HIV/AIDS victims and other vulnerable groups.

61. The Working Group notes that the work of human rights defenders, which includes human rights lawyers, is protected by the Universal Declaration of Human Rights, which recognizes that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, and the right to freedom of peaceful assembly and association (arts. 19–20). The work of human rights defenders is also protected by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which states that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels (arts. 1 and 5 (a)).[5] In addition, the work of lawyers in pursuing the legitimate aim of defending their clients and taking part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, is protected by their own right to freedom of expression under international human rights standards.[6]

62. The Working Group is therefore of the view that the detention of the human rights lawyers Mr. Wang, Mr. Jiang and Ms. Li, being contrary to article 19 of the Universal Declaration of Human Rights, is arbitrary under category II.

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[2] See, for example, opinion No. 41/2017, paras. 98–101.

[3] See E/CN.4/1998/44/Add.2, paras. 42–53, 106–107 and 109 (b) and (c); and E/CN.4/2005/6/Add.4, paras. 73 and 78 (e).

[4] See, for example, opinion No. 22/2018.

[5] See also General Assembly resolution 70/161, para. 8.

[6] See the Basic Principles on the Role of Lawyers.

63. The Working Group refers the matter to the Special Rapporteur on the situation of human right defenders for further consideration of the circumstances of the case and, if necessary, appropriate action.

Category III

64. Given its finding that the deprivation of liberty of the three human rights lawyers in the present case is arbitrary under category II, the Working Group wishes to emphasize that no criminal trial against them should have taken place. However, the trial did take place and the source has submitted that there were severe violations of their fair trial rights and that the subsequent detentions therefore fall under category III. The Working Group will analyse these in turn.

65. In the case of Wang Quanzhang, the information received by the Working Group indicates that the police took Mr. Wang into custody on 3 August 2015 and that, the next day, he was placed under criminal detention for the crimes of "picking quarrels and provoking trouble" and "inciting subversion of State power".

66. The source alleged that Mr. Wang was held in incommunicado detention for several months, starting on 8 January 2016, and that he was formally arrested on January 2017 and indicted in February 2017 for subversion of State power. The Government has not rebutted those allegations.

67. The Government has also not rebutted the information presented by the source that Mr. Wang's right to legal assistance was hindered by the Chinese authorities in several ways:

(a) The authorities obstructed the work of the lawyers hired by Mr. Wang's family in November 2015 by pressuring them to drop the case;

(b) One of his new lawyers was detained in January 2016;

(c) On 9 August 2016, Mr. Wang's lawyer received a letter from the police stating that his client wanted to terminate his legal representation, and did not allow the lawyer to keep a copy of the letter;

(d) Mr. Wang's lawyer was not allowed access to Mr. Wang during the months in which he was held in incommunicado detention, which prevented Mr. Wang from having confidential communication with his legal counsel to prepare his defence;

(e) Various requests by the lawyers to meet with Mr. Wang were rejected on the grounds of national security.

68. The source alleges that Mr. Wang has been subjected to torture or other forms of coercive ill-treatment.

69. In the case of Jiang Tianyong, security officers administratively detained Mr. Jiang on 21 November 2016. On 16 December 2016, the authorities confirmed that Mr. Jiang was in custody under administrative detention for the fraudulent use of another person's identity. On 23 December 2016, the police informed Mr. Jiang's family of the detention. On 21 November 2017, Mr. Jiang was found guilty of inciting subversion of State power through his work as a human rights lawyer. He was sentenced to two years' imprisonment and three years of deprivation of political rights. The source notes that it is believed that Mr. Jiang was coerced or tortured to extract a confession from him.

70. The Government has not rebutted the information presented by the source that Mr. Jiang's right to legal assistance was hindered by Chinese authorities in several ways:

(a) From the outset of his detention in November 2016, Mr. Jiang's lawyers were not allowed access to their client. This was justified on the basis that contact would "endanger national security", "hinder investigation" or "leak State secrets".

(b) Mr. Jiang was allowed formal access to his lawyer only in May 2017, six months after his initial arrest;

(c) On 17 July 2017, the police rejected a request filed by the family-appointed lawyers to meet with Mr. Jiang, claiming that Mr. Jiang had already fired those lawyers;

(d) During the trial, on 22 August 2017, Mr. Jiang was represented by a Government-appointed lawyer, since the authorities did not allow the lawyers hired by his family to meet him, claiming that he had dismissed them.

71. The source submitted that Mr. Jiang was held incommunicado until 31 May 2017. The Government has not rebutted that allegation.

72. In the case of Li Yuhan, she was taken into custody on 9 October 2017. On 31 October 2017, the authorities informed Ms. Li's family verbally that she was being detained for "picking quarrels and provoking trouble".

73. The Working Group is persuaded that, during those three weeks, Ms. Li was held in incommunicado detention and was therefore unable to contact her lawyer or her family. Apparently, she was also tortured. In this regard, the Working Group is of the view that Ms. Li's right of legal defence was also affected.

74. With regard to all three cases, as the Working Group has consistently argued, holding persons incommunicado is not permitted under international human rights law because it violates the right to challenge the lawfulness of detention before a court. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stressed that the use of incommunicado detention is prohibited under international law (A/HRC/13/39/Add.5, para. 156). The Working Group considers that the incommunicado detention of the detainees violates articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights.

75. The Working Group recalls that, in accordance with the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, persons deprived of their liberty should have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons should be promptly informed of this right (para. 12). This right entitles persons deprived of liberty to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information (para. 14).

76. Furthermore, legal counsel should be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. Authorities should respect the privacy and confidentiality of legal counsel-detainee communications (para. 15).

77. The Working Group is persuaded that in the present case, Mr. Wang, Mr. Jiang and Ms. Li were not informed of their right to legal counsel at the moment of arrest and none of them were able to communicate with or consult their legal counsel, or have adequate time to prepare their defence during the incommunicado detention. Such acts and omissions by the authorities are a violation of the guarantees of the due process of law and are of such gravity that they render the detention of Mr. Wang, Mr. Jiang and Ms. Li violations of articles 9 and 10 of the Universal Declaration of Human Rights. The Working Group is therefore of the view that the deprivation of liberty of Mr. Wang, Mr. Jiang and Ms. Li is arbitrary under category III.

78. In relation to the allegations of torture and other forms of cruel or inhuman treatment or punishment by the authorities against Mr. Wang, Mr. Jiang and Ms. Li, in order to extract confessions of guilt, the Working Group is of the view that these allegations strengthen the conclusion that they did not receive a fair trial under the standards of category III. The Working Group has consistently concluded in its opinions that it is not possible for a person who is subjected to torture or other forms of ill-treatment or punishment to be capable of preparing an adequate defence for a trial that respects the equality of both parties before the judicial proceedings. Moreover, the extraction of forced confessions, in violation of article 5 of the Universal Declaration and the *jus cogens* norm that it enshrines, cannot be accepted under international human rights law. Torture or ill-treatment of detainees under prosecution is a denial of the fundamental principles of a fair trial. The Working Group is therefore of the view that the deprivation of liberty of Mr. Wang, Mr. Jiang and Ms. Li is arbitrary under category III.

79. In view of these findings, the Working Group will refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action. The Working Group will refer the allegations concerning Ms. Li's dire health conditions to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for consideration and appropriate action.

80. The Working Group has adopted 86 opinions in relation to China. In 79 of those cases, the Working Group found the deprivation of liberty to be arbitrary. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.[7] Moreover, as a signatory to the International Covenant on Civil and Political Rights since 1998, China is obliged, under article 18 of the 1969 Vienna Convention on the Law of Treaties, to refrain from acts that would defeat the object and purpose of the Covenant, including the repeated denial of the rights to liberty and to a fair trial under its articles 9 and 14.

81. The Working Group would welcome the opportunity to work constructively with the Government in addressing concerns regarding the arbitrary deprivation of liberty in China. In April 2015, the Working Group sent a request to the Government to undertake a country visit, following its earlier visits in 1997 and 2004, and awaits a positive response. Given that the human rights record of China will be subject to review in November 2018, during the third cycle of the universal periodic review, an opportunity exists for the Government to enhance its cooperation with the special procedures of the Human Rights Council and to bring its laws into conformity with international human rights law.

Disposition

82. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Wang Quanzhang, Jiang Tianyong and Li Yuhan, being in contravention of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

83. The Working Group requests the Government of China to take the steps necessary to remedy the situation of Mr. Wang, Mr. Jiang and Ms. Li without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

84. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Wang, Mr. Jiang and Ms. Li immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

85. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Wang, Mr. Jiang and Ms. Li, and to take appropriate measures against those responsible for the violation of their rights.

86. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, and on the situation of human rights defenders, for appropriate action.

87. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

[7] See, for example, opinion No. 47/2012, para. 22. See also opinions No. 93/2017, para. 61, and No. 26/2018, para. 81, in relation to the widespread and systematic arbitrary deprivation of liberty.

Follow-up procedure

88. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Wang, Mr. Jiang and Ms. Li have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Wang, Mr. Jiang and Ms. Li;

(c) Whether an investigation has been conducted into the violation of Mr. Wang, Mr. Jiang and Ms. Li's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of China with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

89. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

90. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

91. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[8]

[*Adopted on 24 August 2018*]

[8] See Human Rights Council resolution 33/30, paras. 3 and 7.